

**Massachusetts Department of Environmental Protection**  
**310 CMR 7.74: Reducing CO<sub>2</sub> Emissions from Electricity Generating Facilities**  
**Frequently Asked Questions (FAQ)**  
**Version 1.3 (December 2018)**

The purpose of this document is to clarify and explain certain provisions of 310 CMR 7.74. Before reading this document, please review the regulation and other available background information, available on MassDEP’s web site via <https://www.mass.gov/guides/electricity-generator-emissions-limits-310-cmr-774>. If you have questions about 310 CMR 7.74, please email [william.space@state.ma.us](mailto:william.space@state.ma.us) or [climate.strategies@state.ma.us](mailto:climate.strategies@state.ma.us).

This version is an update from version 1.2, which was published in October 2018. New or revised material is marked with an asterisk.

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## **Q1 - Which emissions are subject to a compliance obligation under 310 CMR 7.74?**

A1 – The only emissions that are subject to a compliance obligation under 310 CMR 7.74 are CO<sub>2</sub> emissions reported pursuant to the Regional Greenhouse Gas Initiative (RGGI) emissions reporting requirement, 310 CMR 7.70(8). MassDEP is aware that facilities may be required to report additional greenhouse gas (GHG) emissions pursuant to other regulations including the Massachusetts GHG reporting regulation, 310 CMR 7.71, and the US EPA GHG reporting regulation, 40 CFR Part 98; however, these additional emissions are not subject to a compliance obligation under 310 CMR 7.74.

## **Q2 – How will facilities know which emissions can qualify under the “emergency deferred compliance” provisions?**

A2 – 310 CMR 7.74(6)(d) allows an electricity generating facility that emits CO<sub>2</sub> during an emergency to defer, for one year, compliance for a portion or the entirety of the CO<sub>2</sub> emissions emitted during the emergency. (Note that August, 2018 amendments removed regulatory language limiting the use of emergency deferred compliance to the last 45 days of each calendar year, including for 2018.) Any deferred emissions must be offset in the following year on a two for one basis.

The term “emergency” is defined in the regulation. For 2018, emissions will be considered to have occurred during an emergency if they occur when ISO-NE has triggered “Master Local Control Center Procedure No. 2” that affects facilities in Massachusetts. Additional information about this procedure is available on ISO-NE’s web site. Should it be necessary to provide additional or updated information about emergency deferred compliance for a particular year, MassDEP will do so by revising this document and notifying facilities.

## **Q3 – Please explain whether there are any limits on “banking” allowances.**

\*A3 – Revised banking provisions were finalized in August, 2018. The revisions removed restrictions on banking. Facilities may retain unused allowances and use them for compliance in future years, without limitation. In order to ensure that emissions decline each year, MassDEP will adjust the number of allowances auctioned each year downward to ensure that the number of allowances available for use in a year cannot exceed the aggregate emissions limit for the prior year. Please note that MassDEP will not deduct any allowances to comply with 310 CMR 7.74(6)(g)3.; this provision was inadvertently retained when the regulation was revised but no longer applies.

## **Q4 – Is there a risk that outside parties, such as banks or environmental organizations, will buy up allowances and retire them (e.g., as “offsets”)?**

A4 – No, the regulation does not allow or provide any method for allowances to be retired by any outside parties.

## **Q5 – How will facilities comply with the requirements of 310 CMR 7.74 and the Regional Greenhouse Gas Initiative (RGGI)?**

A5 – 310 CMR 7.74 and RGGI are two separate and distinct programs. For facilities, the requirements of the two programs are similar– for each ton of CO<sub>2</sub> emissions, the facility must hold an allowance. Therefore, to comply with both regulations, the facility will need to hold two different types of carbon dioxide allowances (a RGGI allowance and a 7.74 allowance). This will ensure compliance with in-state and regional emissions limits.

## **Q6 – How can I revise the Certificate of Representation (COR) for my facility?**

A6 – To revise the COR for a facility, the Designated Representative (DR) must upload a revised COR form to the Massachusetts Carbon Allowance Registry (Registry), and then immediately make the corresponding changes in the Registry.

- The revised COR does not need to be notarized or mailed to MassDEP.
- Please contact MassDEP for instructions on changing who the DR is for a facility in the Registry. All other changes may be made by the DR in the Registry.
- The DR must ensure that any authorized user who is authorized to transfer allowances from a facility's allowance account is listed on the facility's COR form in the Registry. These authorized users must also be given "View-Only" access to the facility in the Registry so that their names appear in the public facilities report.

## **Q7 – Am I required to report a price when I transfer allowances?**

A7 – Yes, you must report a price when you transfer allowances, unless the sending and receiving facilities are owned by the same regulated entity.

Please note that you may indicate that you believe the transfer price is confidential business information or a trade secret. If you check the box when transferring allowances indicating that you believe the transfer price is confidential business information or a trade secret, you will have the burden to establish the information meets the confidentiality criteria of the Public Records Act.

A separate ***Request to Maintain Information Confidential*** form can be found at <https://www.mass.gov/media/1410331> which can be used to make and support a confidentiality claim addressing the criteria for considering information to be confidential business information or a trade secret pursuant to 310 CMR 3.23. Once a confidentiality claim is made, MassDEP will keep the information subject to the claim confidential until a final determination is required by the receipt of a public record request for the information. The claim will then be evaluated and a final determination will be made with the criteria in 310 CMR 3.23 and requirements of 310 CMR 3.00. Additional information is available at <https://www.mass.gov/media/1702206>.

Please fill out a ***Request to Maintain Information Confidential*** form as soon as possible after the first transfer from a facility account that you complete in the registry when you believe the transfer price is confidential business information. Refer to the following instructions when filling out the form:

1. Section A1: Fill in the Regulated Entity name for your account and the name and contact information for the Designated Representative.
2. Section B2: Check the box marked "Reporting Requirement Under Regulations or Order."
3. Section B3: Check "Trade Secret."
4. Section B4: Check "no." You do not need to submit a sanitized copy of the notice of transfer.
5. Section B5: Specify whether you wish to assert the confidentiality claim for prices of individual transfers or all registered transfers. To request the latter, for example, type: "This request applies to reported prices for transfers made on {date} and indefinitely to all future transfers from the [fill in facility name] registry account."
6. Section B6: Leave this blank.
7. Section B7: You may leave these boxes blank, but please note that MassDEP may require submittal of additional information upon receipt of a public record request. You may also choose to upload additional explanatory information addressing the criteria listed in this section to support the confidentiality claim.
8. Section B8: Check "no" if this is the first confidentiality claim you are making in the registry.
9. Section C: Read and sign the certification statement.

Once complete, the Designated Representative should sign, scan, and upload the completed form to the registry using the Add/View documents option available for the facility (select "Other" for the Document Type).